

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

COCP No.244 of 2004

Date of decision: December 12, 2006.

Massa Singh

...**Petitioner(s)**

v.

Shri R.P.S. Bajwa & Ors.

...**Respondent(s)**

Present: Shri Pardeep Rajput, Advocate for the petitioner.

Shri Pankaj Bhardwaj, Advocate for respondents No.1 and 3.

Surya Kant, J. (Oral)

The petitioner was named as an accused in FIR No.82 dated 22.5.1993, under sections 307, 326, 324, 323, 148, 149 IPC and 25/27 of the Arms Act, registered at P.S. Jandiala Guru, District Amritsar. During the investigation, the police took into custody .32 bore pistol bearing No.149941 made in USA, from the petitioner. He was finally acquitted in the said criminal case by the learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar vide judgment dated 1.2.2002. The petitioner thereafter applied for the release of his weapon. The court allowed his application vide an order dated 31.10.2002 and a direction was issued to the In-charge, Malkhana in the office of SSP, Amritsar to release the petitioner's pistol. Despite that order, the pistol was not released to the petitioner which compelled him to approach this court by way of CWP No.3739 of 2003. In the above stated writ petition, in which SSP, Majitha, In-charge Malkhana,

office of SSP, Amritsar and SHO, P.S. Jandiala Guru were impleaded as respondents, a stand was taken on their behalf that there is no entry in the Malkhana of the pistol recovered from the petitioner and, therefore, the same could not be released to him. According to the respondents, it was apparent that the weapon had not been deposited with the In-charge of the Malkhana.

The above stated defence plea was turned down by this court after observing that the petitioner was not concerned with the manner in which the record is maintained in Malkhana at Amritsar or that whether any entry regarding deposit of the weapon had been made in the register of the Malkhana. After holding that the respondents cannot absolve themselves of the liability to return the pistol on the pretext that there is no entry regarding the deposit of the weapon in the register of the Malkhana, this Court directed the respondents to release the .32 pistol bearing No.149941 made in USA to the petitioner within a period of two weeks from the date of submission of certified copy of the said order.

Alleging non-compliance of the above stated order, this contempt petition has been filed.

In response to the show cause notice, Mr. RPS Bajwa, SSP, Vigilance Bureau, Punjab (the then SSP, Majitha) has filed his affidavit in which it is averred that in terms of the directions of this Court vide the above mentioned judgment dated August 12, 2003, he held an inquiry and FIR has been registered against HC Tilak Raj, who was allegedly responsible for misplacement and/or misappropriation of the petitioner's pistol. A somewhat similar plea is sought to be taken on behalf of the other respondents also.

The fact remains that the directions issued by this Court have not been complied with. Time and again, it is pleaded that as no pistol has been found in the Malkhana and there is no entry to this effect in the register of the Malkhana, nothing can be returned to the petitioner.

As may be noticed from the judgment dated August 12, 2003 rendered by this court, the above noticed lame excuse of the police authorities was outrightly rejected by this Court and a positive direction was issued to return his pistol which was taken into custody from him during the course of investigation of the case in question. The respondents who were the police officials in-charge at the time when the pistol was taken from the petitioner and/or at the time when the direction was issued by this court, therefore, cannot absolve themselves of the responsibility merely by saying that some FIR has been registered.

Similarly, the higher authorities of the State of Punjab are also obligated to comply with the orders passed by this court, more so, when the State of Punjab through its Director General of Police (DGP) was a party to the writ proceedings.

As the pistol recovered from the petitioner is stated to be not available, the only effective mode to comply with the orders passed by this court would be to find out the market value of the said pistol and to compensate the petitioner in monetary terms for the loss thereof.

Consequently, this petition is disposed of with the following clarificatory directions:-

- (i) The Principal Secretary to Govt. Punjab, Home Department and the DGP, Punjab shall immediately take necessary steps to get the market value assessed of .32 bore pistol USA make; the

entire exercise to this effect shall be concluded within two months from the date of receipt of this order;

(ii) After assessing the market value thereof, the price of the pistol would be paid to the petitioner by the State of Punjab through the above named authorities;

(iii) It shall be open to the Principal Secretary, Home Department and the DGP, Punjab to recover the price value of the pistol from the delinquent police officers/officials including the present respondents.

(iv) If the Principal Secretary, Home and the DGP are satisfied that HC Tilak Raj has been made a mere scape-goat and other police officials are involved in the episode, suitable criminal and/or administrative action shall be taken against them as well.

With the directions aforesaid, this petition is disposed of.

Rule discharged.

December 12, 2006.
kadyan

[**Surya Kant**]
Judge